ABDUL JALIL ABDUL HAMID & ORS

v.

KETUA PENGARAH KESATUAN SEKERJA, MALAYSIA & ORS

HIGH COURT MALAYA, KUALA LUMPUR
RAUS SHARIF J
[ORIGINATING MOTION NO: R1-25-69-2002]
29 DECEMBER 2003

ADMINISTRATIVE LAW: *Judicial review - Certiorari - Director General of Trade Unions - Exercise of administrative powers - Tussle for leadership of union between two competing groups - DGTU accepting office bearers of a group and rejecting those of the other - Whether acting in excess of jurisdiction - Trade Unions Act 1959 ss. 41(2), 7(1)(b)*

In this application for an order of *certiorari* to quash the decision of the first respondent Director General of Trade Unions ('DGTU'), a question arose as to whether the DGTU, in exercise of his powers under s. 41 of the Trade Unions Act 1959 ('the Act'), and in the face of a tussle between two groups of union members for the leadership of the union ('the NUBE'), could properly and rightly accept the Forms L as presented to him by a group naming themselves as the lawful office bearers of NUBE, and reject those same forms as presented to him by the other group. The question assumed added significance as the DGTU, in accepting the Forms L of the former group, had indirectly confirmed those in the group as the official and lawful office bearers of NUBE.

Held:

[1] The three Forms L as submitted by the Jalil's group were prepared in pursuance to decisions made at their EXCO meetings. The meetings were however unlawful for having breached the quorum requirement of r. 10.5 of the constitution of NUBE. The meetings being unlawful, all decisions made thereat were null and void and the DGTU was in law correct to reject those forms. (pp 11 f-g & 15 b-c)

[2] The DGTU was wrong in accepting Forms L as submitted by the Fauzi's group. The DGTU might be performing his statutory duty when accepting those forms, but his action had the effect of determining the office bearers of NUBE. The decision of the DGTU was therefore in excess of his

jurisdiction because s. 41 of the Act did not empower or authorize him to determine or declare the office bearers of the union. When the constitution of the office bearers of a union was hotly contested, as in the present case, it was not open to the DGTU to resort to s. 41 to settle the dispute between the parties. (pp 14 a & 15 a-d)

[Application to quash DGTU's decision rejecting relevant Forms L refused. Application to quash DGTU's decision accepting relevant Forms L allowed]

Legislation referred to:
Trade Unions Act 1959, ss. 7(1)(b), 41(2), 44

For the applicants - R Sivarasa; M/s Daim & Gamany
For the 1st respondent - Azizah Haji Nawawi SFC
For the 2nd respondent - Zainur Zakaria; T/n Zainur Zakaria & Co
For the 3rd to 6th and 8th to 20th respondents - D Kalaimany; T/n Kalai & Partners
For the 7th respondent - B Thangaraj; T/n Thangaraj & Assocs

Reported by WA Sharif

JUDGMENT

Raus Sharif J:
This is an application by the applicants for an order of *certiorari* to quash the decision of the Director General of Trade Unions (DGTU) in rejecting Forms L dated 26 April 2002, 30 April 2002 and 3 May 2002 and accepting Forms L dated 2 November 2001 and 9 May 2002. These Forms L were submitted pursuant to s. 41(2) of the Trade Unions Act 1959 (the Act). The decision of the DGTU which the applicants sought to quash is contained in the DGTU's letter dated 29 May 2002. In the said letter, the DGTU rejected the Forms L dated 26 April 2002, 30 April 2002 and 3 May 2002 submitted by the applicants, naming the applicants (Jalil's group) as the lawful office bearers of National Union of Bank Employees (NUBE). In the same letter, the DGTU accepted Forms L dated 2 November 2001 and 9 May 2002 submitted by another group (Fauzi's group) and thus, declaring the Fauzi's group as the rightful office bearers of NUBE.

I will first deal with the issue whether or not the DGTU was right in rejecting the Forms L dated 26 April 2002, 30 April 2002 and 3 May 2002 submitted by Jalil's group, naming them as the lawful office bearers of NUBE. To understand the issue, I think it is important to note the chronological events leading to the submissions of the three Forms L by Jalil's group to the DGTU. The relevant events are as follows:

On 30 October 2001, the National Exco of NUBE removed the 5th applicant (Solomon) as the General Secretary of NUBE and further barred him from holding any office in NUBE.

On 16 November, 2001, Solomon not being satisfied with the said decision, filed a suit in the High Court *vide* Suit No. R1-22-07-2001 (the Solomon suit) to challenge the decision of the Exco of NUBE.

The reliefs that were sought in the Solomon's suit were, *inter alia* as follows:

(a) A declaration that the decision of the Exco of NUBE on 30 October 2001 to remove Solomon as the General Secretary is unlawful, null and void and of no legal effect;

(b) A declaration that the decision of the Exco on 30 October 2001 to prohibit or bar Solomon from holding any position in NUBE is unlawful, null and void and of no effect;

(c) An order that the defendants, by themselves, their servants or agents or otherwise be restrained until further order from acting on the decision of the Exco of the NUBE made on 30 October 2001, that Solomon should be removed as General Secretary of NUBE and that Solomon be prohibited and/or barred from holding any position in the NUBE and/or in any way implementing or giving effect to the said decision or acting to the detrimental or prejudice to Solomon's membership rights.

On 21 November, 2001, Solomon obtained an *ex parte* injunction order restraining the defendants (in the Solomon's suit) and each of themselves, their servants or agents or otherwise from acting on the decision of the Exco of NUBE made on 30 October 2001. The aforesaid Order was continued pursuant to Orders dated 4 December 2001 and 10 January 2002.

On 2 May 2002, on the application of the defendants, the High Court struck out and dismissed with costs, Solomon's suit, on the ground that Solomon's complaint ought to have been referred to arbitration pursuant to r. 26 of NUBE's Rule and Constitution read with s. 44 of the Act. On 3 May 2002, Solomon filed an appeal to the Court of Appeal against the said decision.

On 7 May 2002, Solomon filed an application in the Court of Appeal for a stay of the order dated 2 May 2002 made by the High Court pending the final disposal of his appeal to the Court of Appeal. On 8 May 2002, the Court of Appeal granted an Interim Order to stay the decision of the High Court dated 2 May 2002 and restored the Injunction Order dated 4 December 2001 retrospectively.

On 16 May, 2002, the Court of Appeal decided that the aforesaid Interim Order of 8 May, 2002 and the restoring order should continue until further order from the court. The appeal proper is yet to be heard.

Meanwhile, on 23 April, 2002, Jalil's group which includes Solomon, numbering ten held a meeting and pursuant thereto submitted Form L dated 26 April 2002 to the DGTU, naming the office bearers of NUBE.

Again, on 30 April 2002, the same group had another meeting and appointed other officers to fill the vacant positions of the Exco members, whom the applicants had earlier, at the meeting of 23 April 2002 had suspended and expelled. The group then submitted another Forms L dated 30 April 2002 to the DGTU, naming the additional office bearers of NUBE.

On 2 May 2002, Jalil's group held another meeting. This time they decided to revoke the earlier decision of the Exco of 30 October 2001 concerning Solomon and reaffirmed its decision of 30 April 2002 that is; reinstating Solomon as the General Secretary. Arising from that meeting the group then submitted another Form L dated 3 May 2002. The submissisons of the three Forms L, by Jalil's group, had the effect, if accepted by the DGTU, of making Jalil's group as the rightful office bearers of NUBE.

It was submitted by Encik Zainur Zakaria, who acted for the second respondent, that the first meeting by Jalil's group on 23 April 2002 was illegal and contrary to the constitution of NUBE. I have no reason to disagree. This is because under r. 10.5 of the constitution of NUBE, the quorum for the Exco meeting of NUBE shall be two-third. From the facts it is undisputed that the original membership of the Exco of NUBE was twenty-six. But as at 23 April 2002, the Exco had twenty-four members. Two positions were vacant. Therefore, the necessary quorum of an Exco meeting at the material time was, therefore, sixteen. But the meeting held by Jalil's group on 23 April 2002 was attended only by ten original members. Clearly the meeting was in breach of the quorum requirement and it must follow that the said meeting was unlawful. As the meeting was unlawful, all decisions taken at the said meeting including submitting the names of the office-bearers of the Exco in the form L must also be null and void. Thus, the DGTU was therefore, right in law to reject Form L dated 23 April 2002.

Form L dated 30 April 2002 was submitted by Jalil's group pursuant to a meeting held on 30 April 2002. I am also of the view that the meeting was also an unlawful meeting for having breached the requirement of r. 10.5 of the constitution. Though the list of attendance showed seventeen members were

present, seven of those present were new members. They were never members of the original Exco and no explanation or evidence had been produced as to how they become members of the Exco. Consequently, I am of the view that all decisions made by this meeting including the submission of Form L dated 30 April 2002 must also be null and void. Again the DGTU was right in law to reject Form L dated 30 April 2002, submitted by Jalil's group.

Forms L dated 3 May 2002, was submitted pursuant to an Exco meeting held by the Solomon group on 23 April 2002, 25 April 2002 and 30 April 2002. As stated earlier, as the meetings held on 23 April 2002 and 30 April 2002 were null and void, there is no possibility that the meeting on 25 April 2002 can be valid. Again the DGTU was right in law to reject Form L dated 3 May 2002.

Thus, in regard to the first issue, it is my finding that the three forms submitted by the Jalil's group were prepared pursuant to decision made at unlawful meetings. The DGTU was therefore, absolutely correct in law to reject those forms. To me, the DGTU did not commit any error when he rejected the three Forms. I have no reason to interfere with the DGTU's decision.

I will now deal on the second issue ie, whether the DGTU was correct in law accepting the Forms L dated 2 November 2001 and 9 May 2002. Form L dated 2 November 2001 was submitted to DGTU by the fifth respondent as General Secretary reflecting the changes made following the removal of Solomon as the General Secretary. From the said Form, it can be seen that the fifth respondent, Mohd Noor bin Basir was made General Secretary to replace Solomon. The seventh respondent, Toh Seng Hock the then vice president was made the Treasurer to replace Mohd Noor, while S Kandaiyah was made the vice president to replace Toh Seng Hock and Prathiba Raj was made the Deputy General Secretary which was then vacant.

There were two Forms L dated 2 November 2002 submitted to the DGTU. One Form, related to the resignation of Encik Johari Sulaiman, from the post of President of NUBE and the other the appointment of Encik Muhamad Fauzi to the post of President and Encik Abdul Malek Daud as the Deputy President of NUBE.

The issue before me, is whether the DGTU was right in accepting the said Forms. I am of the view that the DGTU was wrong in doing so. No doubt the DGTU in paras. 12, 13, and 18 of his affidavit, has averred that he was merely performing his statutory duties under s. 41(2) of the Act, but his action

has the effect determining the office bearers of NUBE. To me the decision of the DGTU is in excess of his jurisdiction because s. 41 of the Act does not empower or authorize the DGTU to determine or to declare the office bearers of the union. Section 41 of the Act reads as follows:

> 41. Notification of changes of officers and employees.
>
> (1) A trade union shall exhibit prominently in its registered office in a place where it may be easily read a list showing the names and titles of the officers and employees for the time being of the union, and shall also so exhibit at the office of each branch of the trade union a list showing the names and titles of the officers and employees for the time being of the branch.
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> (2) Notice in the form prescribed by regulations of every change of officer, employee or of the title of any officer or employee shall, together with the fee prescribed by regulations, be sent to the Director General within fourteen days after the change, and the Director General shall, on being satisfied that such change is not contrary to the rules of the union or this Act or any regulations, alter the register accordingly.

I am of the view that the power of the DGTU to alter the register under s. 41 of the Act must be read to its proper construction with the duty to maintain the register as provided under s. 7 of the Act in particular s. 7(1)(b). Section 7 provides as follows:

> 7. Register of trade unions.
>
> (1) The Director General shall keep and maintain in such form as may be prescribed, a Register of Trade Unions in which shall be registered:
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> (a) the prescribed particulars relating to any registered trade union;
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> (b) any alteration or change which may from time to time be effected in such particulars; and
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> (c) all such other matters as may be required to be registered therein under this Act.
>
> (2) A certified copy of any entry in the register shall be conclusive proof of the facts specified therein as on the date of such certified copy.

The power under s. 7 above, cannot be arbitrarily used to settle a dispute between the two competing groups. To me, the true purport of s. 41, is merely to impose on the trade union an obligation to notify the DGTU of any change for the purpose of maintenance of the requirements under s. 7. Section 41(2)

is to impose the corresponding duty on the DGTU to make the necessary changes after satisfying himself that they were in accordance with the rules of the union. But, surely when the constitution of the office bearers of union, as in the present case, is hotly contested, the DGTU surely cannot resort to s. 41 to settle the dispute between the competing groups.

In this case, the DGTU, was not only aware of the disputes between the two groups, but was also aware that the disputes had been brought to the court. When Solomon was removed as the General Secretary of NUBE on 30 October 2001 and the Exco of NUBE immediately appointed Mohd Noor bin Basir to replace Solomon as General Secretary and make other changes in the line-up of the office bearers as seen in forms L dated 2 November 2001, Solomon's solicitor on 9 November, 2001, wrote to DGTU to state that Solomon will be filling an action in court to challenge the Exco's decision dated 30 October, 2001. In the said letter, Solomon's solicitor informed the DGTU not to recognize Mohd. Noor bin Basir as the General Secretary of NUBE until the lawfulness of the Exco's decision dated 30 October 2001 is finally determined.

Subsequently, when Solomon obtained the *ex parte* injunction order as 21 November 2001, his solicitors wrote to the DGTU on 23 November, 2001 and notified him of the same. In fact, by letter dated 28 November, 2001 the DGTU (through his deputy) duly acknowledged receipt of Solomon's solicitors' letters dated 9 November 2001 and 23 November 2001 and the injunction order dated 21 November 2001. In particular, the DGTU agreed that it would be inappropriate/improper for him to recognize Mohd Noor bin Basir as General Secretary of NUBE until the lawfulness of the action taken by the Exco to remove Solomon as Secretary General of NUBE is finally determined. Further by a letter dated 4 December, 2001 Solomon solicitor wrote to the DGTU and notified him of the continuation of the injunction order.

On 25 May 2002, the DGTU was informed that the Court of Appeal had, on 16 May 2002 decided to stay the Order of the High Court of 2 May 2002 and restored the earlier Order of the High Court of 4 December 2001 pending the disposal of Solomon's application for stay in the Court of Appeal. In the second letter, the DGTU was also informed therefore, Solomon was to remain as the Secretary General of NUBE and he should not make any decision with regard to the state of the Exco of NUBE as it would be sub-judice in the circumstances and subsequently the seal order of the Court of Appeal was duly served on the DGTU.

Clearly the DGTU was fully aware of the tussle between the two groups to control the NUBE. Both groups were competing with each other to gain control of the union. The DGTU, must be aware that, each group did not have the

necessary quorum to make the decision for the union. The additional officer bearers in Forms L accepted by him, were being disputed by Jalil's group. Surely the DGTU being fully aware and conscious of these facts cannot use s. 41(2) of the Act to indirectly solve the disputes between the two groups. By doing so, I am of the view the DGTU had acted in excess of his jurisdiction and thus; his decision is open to judicial review.

Accordingly, I made the following orders, firstly, the application by the applicants to quash the decision of the DGTU in rejecting Forms L dated 26 April 2002, 30 April 2002 and 3 May 2002, submitted by the applicant naming the applicant as the lawful office bearers of the NUBE was refused. To me, the DGTU was right in rejecting these Forms L. Secondly, the application by the applicants to quash the decision of the DGTU in accepting Forms L dated 2 November 2002 and 9 May 2002, which has the effect of declaring the lawful office bearers of Exco, was therefore, allowed. That part of the DGTU's decision was quashed. Thirdly, each party to bear their own costs.